

NO. _____

STATE OF TEXAS,
Plaintiff

v.

ASAP MOTORS & PARTS
SYSTEMS, INC., BRIAN
MCCUTCHEON, JOHN SCOTT
SANDELL dba ASAP ENGINES and
dba YOUR ENGINE STORE,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, on behalf of the interest of the general public, complains of ASAP MOTORS & PARTS SYSTEMS, INC., BRIAN MCCUTCHEON and JOHN SCOTT SANDELL doing business as ASAP ENGINES and YOUR ENGINE STORE. The Attorney General would respectfully show the Court as follows:

DISCOVERY

1. Discovery shall be conducted under a LEVEL 2 discovery control plan pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

JURISDICTION

2. This action is brought by Attorney General Greg Abbott (hereinafter the "Attorney General"),

*State of Texas v. ASAP Motors & Parts Systems, Inc. et al.
Plaintiff's Original Petition*

through his Consumer Protection and Public Health Division in the name of the STATE OF TEXAS under the authority granted to him pursuant to §17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.*, (hereinafter the “DTPA”), upon the grounds that Defendants have engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by §17.46 (a) and (b) of the DTPA.

DEFENDANTS

3. ASAP MOTORS & PARTS SYSTEMS, INC., (“ASAP MOTORS”) is a Texas corporation whose principal place of business is 6432 Cunningham Road, Houston, Texas 77041, Harris County, Texas. ASAP MOTORS may be served with process by serving its registered agent for service of process, Brian McCutcheon, at 4910 Joni Way, Richmond, Texas 77469-7921.

4. BRIAN EUGENE MCCUTCHEON (hereinafter, “MCCUTCHEON”) is the President of ASAP MOTORS and is an individual residing in Fort Bend County, Texas who may be served with process at 4910 Joni Way, Richmond, Texas 77469-7921.

5. JOHN SCOTT SANDELL (hereinafter, “SANDELL”) is an officer and principal of ASAP MOTORS whose business address is 6432 Cunningham Road, Houston, Texas 77041, Harris County, Texas. SANDELL is an individual residing in Fort Bend County, Texas who may be served with process at 1606 Wood Song Court, Sugar Land, Texas 77479 or at 7415 Guinevere Drive, Sugar Land, Texas 77479-6186.

VENUE

6. Venue of this suit lies in Harris County, Texas, for the following reasons:

A. Venue is proper in Harris County, Texas, pursuant to § 15.002 (a)(1) of the TEX. CIV.

PRAC. & REM. CODE, because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

B. Venue is also proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. 15.002(a)(3) because the corporate Defendant's principal office is located in Houston, Harris County, Texas.

C. Venue is also proper under DTPA §17.56 because Defendants do business in Harris County, Texas, and the transactions that form the basis of this cause of action occurred in Harris County, Texas.

PUBLIC INTEREST

7. Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below. Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

8. Defendants have, at all times described below, engaged in conduct constituting "trade" and "commerce," as those terms are defined in §17.45(6) of the DTPA.

ACTS OF AGENTS

9. Defendant ASAP MOTORS & PARTS SYSTEMS, INC., is a Texas Corporation with headquarters in Houston, Texas. Defendants Brian McCutcheon and John Scott Sandell are officers and principals of ASAP MOTORS & PARTS SYSTEMS, INC. (*Exhibit “1, Investigator’s Affidavit, [p. 3, para. 10]” & Exhibit “12, Texas Secretary of State Articles of Incorporation records”*).

10. Defendants Brian McCutcheon and John Scott Sandell, jointly and severally, participated directly in the false, misleading and deceptive acts or practices and had the authority to control them. Further, each Defendant had actual knowledge of material misrepresentations, was aware of the actual content of the false and misleading solicitations and authorized and/or failed to prohibit same.

11. Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

- A. The Defendant performed or participated in the act, or
- B. The Defendant’s officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT NOT GIVEN

12. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would dissipate or secrete assets if prior notice of this suit were given.

SPECIFIC FACTUAL ALLEGATIONS

ASAP MOTORS' DECEPTIVE ADVERTISING

13. Defendants are engaged in the sale and distribution of used automobile engines and transmissions. Defendants advertise via a website (www.asapmotors.com), Yellow Pages and Yellow Book directories, flyers, and contact consumers through other websites selling used engines and transmissions (e.g., www.junkyarddog.com, www.qualityusedengines.com). (*Exhibit "1, Investigator's Affidavit, [pp. 1-2, paras. 3-5]"*, *Exhibit "9, Prater Affidavit, [p. 1, para. 2]"*, *Exhibit "11 Neisser Affidavit, [p. 1, para. 2]"*, & *Exhibit "17, ASAP website"*).

14. Defendants falsely represent to consumers that:

- a) They sell quality replacement engines and transmissions with low mileage (*Exhibit "17, ASAP website" & Exhibit "10, Larry Smith Affidavit, [p. 1, para. 2]"*);
- b) Engines and transmissions are "quality tested", "rigorously inspected" and "compression tested" (*Exhibit "17, ASAP website"*, & *Exhibit "4, Sinex Affidavit [p. 1, para 2.]"*);
- c) Engines and transmissions are leak down tested, hot run tested, inspected, cylinder tested, and steam cleaned before being shipped to the consumer (*Exhibit "2, Gordon Affidavit [p. 1, para. 3]" & Exhibit "9, Prater Affidavit [p. 3, para 3.]"*);
- d) Engines and transmissions available include Japanese and European motors and transmissions, ASAP MOTORS is the "Japanese Direct" motor headquarters with engines that "arrive directly from Japan", and Japanese motors in its inventory are quality low mileage units due to a stringent vehicle inspection process called the

“Shaken” that these engines and transmissions undergo in Japan, (*Exhibit “17, ASAP website”*);

- e) Japanese motors sold are not merely replacement engines, but in fact can improve “power and reliability” of a consumer’s vehicle (*Exhibit “17, ASAP website”*);
- f) That they sell quality used engines that are “ready for immediate installation” without any other required parts (*Exhibit “17, ASAP website”*); and
- g) They are able to ship any order within days, sometimes even overnight. (*Exhibit “17, ASAP website” & Exhibit “4, Sinex Affidavit, [p. 1, para. 3]”*).

DEFENDANTS’ DECEPTIVE REPRESENTATIONS TO CONSUMERS

15. Defendants direct, authorize and encourage their employees to make certain false representations when soliciting business. Consumers (some of them experienced mechanics) report that they purchase from Defendants, instead of other businesses, because they are looking for a specific year and model type of engine or transmission or because they need a motor or engine that is hard to find due to limited availability or compatibility. (*Exhibit “2, Gordon Affidavit, [p. 1, para. 2]”*, *Exhibit “3, Pisz, [p. 1, para. 3]”*, *Exhibit “5, Doskey Affidavit, [p. 1, para. 3]”*, *Exhibit “7, Brannon Affidavit, [p. 1, paras. 2-4]”*, & *Exhibit “8, Allen Affidavit, [p. 1, para. 2]”*). Defendants claim to have the particular engine or transmission in stock. Further, consumers report that when they contact or are contacted by Defendants to order an engine or transmission, Defendants claim that the used motors or transmissions for sale have certain **characteristics**, including that they:

- a) are tested and inspected by Defendants, including leak testing, hot run testing, and cylinder testing (*Exhibit “2, Gordon Affidavit, [p. 1, para. 3]” & Exhibit “11,*

Neisser Affidavit, [p. 1, para. 3]);

- b) are low mileage (*Exhibit “6, Chou Yung-Sen Affidavit, [p. 1, para. 3]”, Exhibit “8, Allen Affidavit, [p. 1, para. 2]” & Exhibit “9, Prater Affidavit, [p. 1, para. 3]”*);
- c) are imported from Japan if the engine ordered is Japanese (*Exhibit “4, Sinex Affidavit, [p.1, para. 2]”, Exhibit “5, Doskey Affidavit, [p. 1, para. 2-3]” & Exhibit “8, Allen Affidavit, [p. 1, para. 2]”,);*
- d) that upon receipt of full payment, the unit will be delivered within days and that Defendants can even ship some units the same day. (*Exhibit “2, Gordon Affidavit, [p. 2, para. 3]” & Exhibit “4, Sinex Affidavit, [p. 1, para. 3]”*);
- e) are “plug n’ play” meaning they will plug into a consumers vehicle and run without any other required parts. (*Exhibit “10, Larry Smith Affidavit, [p. 1, para. 2]”*).

DEFENDANTS DELIVER INCORRECT, DEFECTIVE AND DAMAGED UNITS

16. Many consumers that receive their order find upon inspection that Defendants delivered a motor or transmission very different from what the consumer ordered. (*Exhibit “8, Allen Affidavit, [p. 1, para. 3]” & Exhibit “2, Gordon Affidavit, [p. 1, para. 4]”*). Consumers call Defendants about this “mistake”, and are told that Defendants will pick up the wrong motor and drop off the correct one at the same time. However, when Defendants arrange for the wrong engine to be picked up, it does not deliver the correct motor or sends another damaged or defective motor (*Exhibit “2, Gordon Affidavit, [p. 1, paras. 4-6]”*).

17. Some consumers, after receiving their order, find that upon inspection and before they attempt installation, Defendants deliver a motor or transmission that is **defective or damaged**,

(*Exhibit “3, Pisz Affidavit, [p. 1, paras. 5-6]”*.), **VIN numbers missing or scratched off**, making it difficult to trace the origin of the motor (*Exhibit “8, Allen Affidavit, [p. 1, para. 4]”*), or a unit with **much higher mileage than advertised**. (*Exhibit “6, Chou Yung-Sen Affidavit, [p. 1, para. 3]”*.).

18. Other consumers find, immediately after installation, that ASAP MOTORS has delivered a transmission that does not work, a motor that does not start at all, a unit that only starts after missing parts are replaced, a unit that has **rusty valves** or **damaged timing gears** (*Exhibit “3, Pisz Affidavit, [p. 1, para. 6]” & Exhibit “6, Chou Yung-Sen Affidavit, [p. 1, para. 3]”*.), or **holes in the gasket cover and water in the oil pan** (*Exhibit “2, Gordon Affidavit, [p. 1, para. 6]”*), or that makes **loud or unusual noises** when started (*Exhibit “2, Gordon Affidavit, [p. 1, para. 6]”, Exhibit “4, Sinex Affidavit [p. 2, para. 11]”, & Exhibit “10, Larry Smith Affidavit, [p. 1, para. 6]”*), or **stops working** after a relatively short period of time. (*Exhibit “5, Doskey Affidavit [p.1, para. 5]”*.).

19. Consumers and their mechanics find that Defendants are not, as it claims, testing motors and transmissions before shipping them to consumers. (*Exhibit “2, Gordon Affidavit, [p. 1, para. 7]”, Exhibit “10, Larry Smith Affidavit, [p. 2, para. 8]”*.).

DELIVERY & RETURN PROBLEMS

20. Defendants require that a consumer pay the full charge before the unit is shipped. However, after payment is received, consumers commonly experience significant delays in delivery. When consumers call about these delays, Defendants resort to a series of delay tactics, including repeatedly telling the consumer to call back, putting the consumer on hold for extended periods of time, representing that the unit has been shipped when it has not, or telling the consumer that the unit is not

“ready” as promised (*Exhibit “2, Gordon Affidavit, [p. 1, para. 5]” & Exhibit “4, Sinex Affidavit, [p. 2, para. 9]”*).

21. Even when Defendants deliver a damaged or defective product, they often charge consumers a **20% restocking fee**, despite the fact that Defendants’ own materials state that the 20% restocking fee only applies to non-defective returns. (*Exhibit “3, Pisz Affidavit, [p. 2, paras. 9, 14]”*).

22. Defendants also resort to delay tactics for returns, and seek to avoid paying claims under the warranty. Consumers report that when they call Defendants to report a defective or wrong unit, Defendants delay authorizing return of the unit. (*Exhibit “10, Larry Smith Affidavit, [p. 2, paras. 9-10]”*). If return is authorized for a defective or incorrect unit, Defendants delay checking the unit for the defects. Weeks pass, and Defendants then refuse to honor the warranty they promised to consumers. (*Exhibit “10, Larry Smith Affidavit, [p. 2, para. 12-18]”*).

23. Defendants do not abide by the terms of their own warranty, and use claims of voided warranties to deny refunds or returns to consumers. Defendants find reasons to deny coverage under the extended warranty, refuse to cover the cost of installation, and either blame the consumer for creating the problem or delay processing of the claim and then state that the warranty has expired. (*Exhibit “8, Allen Affidavit, [p. 2, para. 6]”, Exhibit “7, Brannon Affidavit, [p. 1, para. 5]”, Exhibit “6, Chou Yung-Sen Affidavit, [p. 1, para. 4]” & Exhibit “5, Doskey Affidavit, [p. 1, para. 5]”*).

24. If Defendants ship a replacement order, they often send a replacement unit that is also found to be damaged or defective (*Exhibit “2, Gordon Affidavit, [p. 1, para. 6]”, Exhibit “11, Neisser Affidavit, [p. 2, paras. 8-9]” & Exhibit “10, Larry Smith Affidavit, [p. 3, para. 24]”*), and/or claim the warranty has expired.

ASAP MOTORS BLAMES THE CONSUMER VICTIM

25. Defendants claim to test all units before shipping, but do not produce these **test results** when requested, blame the consumer or the consumer's mechanic for defects or damage, and claim that the unit must have been damaged during installation, thereby **dishonoring the warranty** and **denying refunds**. (*Exhibit "6, Chou Yung-Sen Affidavit, [p. 1, para. 4]"*). Defendants claim that consumers or their mechanics must have melted "**heat tabs**," even when consumers offer proof that the heat tabs were not melted (*Exhibit "7, Brannon Affidavit, [p. 2, para. 6]"*) or claim the consumer ordered the wrong unit and, therefore, if returned, the consumer will have to pay the shipping charge and be charged a 20% restocking fee. (*Exhibit "8, Allen Affidavit, [p. 1, para. 5]"*).

26. When a consumer denies ordering the wrong unit, Defendants often claim that they have an **audio recording** of the transaction (*Exhibit "6, Chou Yung-Sen Affidavit [p.1, para. 4]"*), but these recordings are never produced. (*Exhibit "8, Allen Affidavit, [p. 1, para. 5]"*).

VIOLATIONS OF THE DTPA

27. Defendants, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA §17.46(a) and DTPA §17.46(b), by engaging in the following conduct:

- a) Causing confusion or misunderstanding as to the **source, sponsorship, approval, or certification** of goods or services, in violation of DTPA, §17.46(b)(2);
- b) Causing confusion or misunderstanding as to **affiliation, connection, or association with, or certification by, another**, in violation of DTPA, §17.46(b)(3);
- c) Using deceptive representations or designations of geographic origin in connection

- with goods or services, in violation of DTPA, §17.46(b)(3);
- d) Representing that goods or services have **sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities** which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA, §17.46(b)(5);
 - e) Representing that goods or services are of a particular **standard, quality, or grade**, or that goods are of a particular **style or model**, if they are of another, in violation of DTPA, §17.46(b)(7);
 - f) **Advertising goods or services** with intent not to sell them as advertised, in violation of DTPA, §17.46(b)(9);
 - g) Representing that an agreement confers or involves **rights, remedies, or obligations** which it does not have or involve, in violation of DTPA, §17.46(b)(12);
 - h) Knowingly making false or misleading statements of fact concerning the **need for parts, replacement, or repair service**, in violation of DTPA, §17.46(b)(13);
 - i) Representing that a **guarantee or warranty** confers or involves rights or remedies which it does not have or involve, in violation of DTPA, §17.46(b)(20);
 - j) Representing that **work or services** have been performed on, or **parts replaced** in, goods when the work or services were not performed or the parts replaced, in violation of DTPA, §17.46(b)(22);
 - k) **Filing suit** founded upon a **written contractual obligation** of and signed by the defendant **to pay money** arising out of or based on a consumer transaction for goods,

services...**in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract ...**; in violation of DTPA, §17.46(b)(23); and

- 1) **Failing to disclose** information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was **intended to induce** the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of DTPA, §17.46(b)(24).

DISGORGEMENT

28. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

29. After due notice and a hearing, the court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION

30. The Court should make findings at the conclusion of this case that all of the Defendants

engaged in actual fraud and false representation in that Defendants have made repeated and materially false representations to the public in the sale of used engines and transmissions, which were known to be false when made. Such false representations were made with the intention that they be acted upon by the consumers to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to hundreds if not thousands of consumers across the United States as well as in the State of Texas.

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

31. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect Defendants' assets from dissipation so that the many victims of Defendants' actions can receive the restitution to which they are entitled. Defendants take in great sums of money from consumers through their scheme and use fraudulently solicited funds for personal gain. Defendants' assets are subject to dissipation for the following reasons:

- a) Defendants refuse to refund appropriate monies to consumers after consumers report that they have been sent a wrong, damaged or defective engine or transmission. (*Exhibit "8, Allen Affidavit, [pp. 1-2, paras. 5-6]"*, *Exhibit "7, Brannon Affidavit, [pp. 1-2, paras. 5-7]"*, *Exhibit "6, Chou Yung-Sen Affidavit, [pp. 1-2, paras. 4-8]"* & *Exhibit "5, Doskey Affidavit, [pp. 1-2, paras. 5-7]"*). Defendants are in possession of funds to which they have no justiciable claim.
- b) Defendants sue out-of-state consumers in small claims court in Harris County, Texas, in violation of DTPA, §17.46(b)(23). Defendants sue consumers who initiate a chargeback or reversal with their credit card company in order to recover the money

they spent on the wrong, damaged or defective engines or transmissions that Defendants send. (*Exhibit “1, Investigator’s Affidavit, [p. 8, para. 26]” & Exhibit “4, Sinex Affidavit, [p. 3, para. 16-19]”*).

- c) Defendants appropriate millions of dollars under false pretenses from unsuspecting consumers and then dissipate these fraudulently obtained assets. (*Exhibit “1, Investigator’s Affidavit, [pp. 5-8, para. 18-26]”*).

32. For these reasons, the assets of Defendants are subject to dissipation and secretion and therefore should be frozen pending final trial so restitution can be made and full and final relief can be awarded at final trial.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

33. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions (containing requests for production) of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants’ answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled temporary injunction hearing. Some of these witnesses live outside the State of Texas and thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

TRIAL BY JURY

34. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk’s office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

35. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below.

PRAYER

36. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;

B. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the

jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court;

C. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

D. Representing, selling, marketing, promoting, distributing or advertising to consumers, expressly or by implication,

1. that Defendants inspect and test engines or transmissions via run testing, hot run testing, cylinder testing, leak down testing, compression testing, bench testing or any other test or inspection when such tests or inspections have not been performed on all engines sold;
2. that Defendants inspect and test an engine or transmission unless specific testing documentation as to each engine or transmission purchased is provided to the consumer prior to purchase;
3. an erroneous mileage or usage on engines or transmissions;
4. an erroneous origin of an engine or transmission, including that an engine was imported directly from Japan to ASAP Motors when it was not;
5. that an engine or transmission is of high quality, when in fact such engine or transmission is damaged or defective;

- C. Failing to disclose all terms of the sales agreement, or of any refund policy orally and in writing to each consumer prior to purchase, including the specific terms and conditions of refunds, returns, and restocking fees;
- D. Charging a 20% restocking fee to any consumer who is sent an engine or transmission different from what they ordered, or in a damaged or defective state;
- E. Representing expressly or by implication that an engine or transmission is in stock or will be delivered by a certain date unless such representation is true at the time it is made;
- F. Misrepresenting or failing to disclose prior to purchase the specific terms of any warranty or extended warranty, including the shipping, labor or other incidental costs incurred or to be incurred by the consumer;
- G. Failing to disclose, orally and in writing, prior to any purchase, all of the specific terms of any warranty, including the beginning and end of the warranty period;
- H. Threatening a consumer with filing any action in any Court, including small claims court, in an attempt to collect any monies claimed to be owed from consumers, unless said court is located in the city where the consumer resides or is domiciled;
- I. Making any attempt to collect any monies claimed to be owed from consumers in a court not located in the city where the consumer resides or is domiciled;
- J. Taking any action to collect any judgment that was obtained against a consumer who purchased an engine or transmission from Defendants until further Order of this Court;

- K. Withdrawing or debiting any consumer's bank account or credit card without the expressed written and signed consent by the consumer on a separate form giving permission to do so in advance.

37. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

- A. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this court to compensate for such losses;

- B. Adjudge against each Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$250,000 as allowed by law under the DTPA, TEX. BUS. & COM. CODE §17.47(c)(2), due to Defendants committing acts and practices that were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

- C. Adjudge against each Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in an amount up to \$20,000 per violation as allowed by law pursuant to the DTPA TEX. BUS. & COM. CODE §17.47(c)(1);

- D. Order Defendants to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

- E. Order the disgorgement of all sums taken from consumers by means of Deceptive Trade Practices, together with all proceeds, interest, income, profits and accessions thereto;

- F. Grant leave to the Plaintiff to conduct telephonic, oral and other depositions prior to the Defendants' answer date and any Temporary Injunction hearing; and

G. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

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First Assistant Attorney General

JEFF ROSE
Deputy First Assistant Attorney General

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ATTORNEYS FOR THE STATE OF TEXAS

VERIFICATION

STATE OF TEXAS

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COUNTY OF HARRIS

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Before me, the undersigned Notary Public, on this day personally appeared Rodney Booker, who, after being duly sworn, stated under oath that he is the investigator for Plaintiff in this action, that he has read the above petition, and that every statement contained in the petition is true and correct as based upon the personal knowledge of all of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition.

RODNEY BOOKER

SUBSCRIBED AND SWORN TO BEFORE ME, on the _____ day of May, 2007, to certify which witness my hand and official seal.

NOTARY PUBLIC
State of Texas